IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1086 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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RAMESH BABAJI SOLANKI - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR HD CHUDASAMA for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 07/02/2006

ORAL JUDGMENT

1.Ramesh Babaji Solanki, petitioner-detenu has filed habeas corpus petition under Article 226 of the Constitution of India challenging the order of

detention dated 15/10/2005 passed by the Commissioner of Police, Ahmedabad, detaining authority, under the provisions of Sub Section 2 of Section 3 of Gujarat Prevention of Anti-Social Activities Act, 1985 (for short PASA Act).

2. Petition has been filed on 27/12/2005. When the matter was placed before the Court on 24/1/2006, this Court (Coram:K.M.Mehta, J.) has issued rule which was returnable on 7/2/2006. Mr.L.R.Pujari appears on behalf of respondents. Therefore, with consent of parties, matter is taken up for final hearing before this Court.

3. Mr.Jayesh Dave, learned advocate who appeared on behalf of Mr.H.D.Chudasama, learned advocate for the petitioner has invited my attention to the detention order dated 15/10/2005 passed by the detaining authority under the provisions of PASA Act. He has also invited my attention to the order of committal dated 15/10/2005 by which the detenu was sent to Rajkot jail. The learned advocate for the petitioner has also invited my attention to the grounds supplied by the authority dated 15/10/2005. The grounds of detention revels that petitioner has committed three offences

which are as under:

3.1) Offence was registered at East Prohibition Station in connection with criminal case no.1854 of 2004 on 29/11/2004 under Section 66(B) and 65(E) of the Bombay Prohibition Act. It is alleged that detenu was storing 450 (four hundred and fifty) liters of country liquor.

3.2) Offence was registered at East Prohibition Station in connection with criminal case no.1855 of 2004 on 29/11/2004 under Section 66(B), 65(E) and 81 of the Bombay Prohibition Act. It is alleged that detenu was storing eight liters of country liquor.

3.3) Offence was registered at Odhav Police Station in connection with criminal case no.5194 of 2005 on 10/10/2005 under Section 66(B), 65(E), 81 and 83 of the Bombay Prohibition Act. It is alleged that detenu was storing 350 (three hundred and fifty) liters of country liquor.

4. It is also alleged that petitioner is 'bootlegger' within the meaning of Section 2(c) of the PASA Act as carrying illegal and anti social activities of storing country liquor which affects public health.

5.Mr.Jayesh Dave, learned advocate for the petitioner has stated that as the first incident is concerned, in this case, the learned Metropolitan Magistrate Court No.20, Ahmedabad by its judgment and order dated 22/8/2005 pleased to acquit the petitioner-detenu in this behalf under the Bombay Prohibition Act. Though the said order has been passed, the authority has stated the same which is mentioned in the grounds also. This shows that there is total non application of mind. The sponsoring authority has not properly put the material required in this behalf. The learned advocate for the petitioner has stated that in this behalf, subjective satisfaction of the detaining authority is vitiated because material fact of acquittal of the detenu in this case is mentioned by the petitioner. So, the subjective satisfaction arrived at by the authority is vitiated. In support of the same, the learned advocate for the petitioner has relied upon the Hon'ble Supreme Court judgment in the case of Dharmadas Shamlal Agarwal v. The Police Commissioner and another, reported in AIR 1989 SC 1282 where the Supreme Court has relied upon all decisions. In para 12 of the said judgment at page 1286, the Hon'ble Supreme Court has observed as under:

“From the above decisions it emerges that the

requisite subjective satisfaction the formation of which is a condition precedent to passing of a detention order will get vitiated if material or vital facts which would have bearing on the issue and weighed he satisfaction of the detaining authority one way or the other and influenced his mind are either withheld or suppressed by the sponsoring authority or ignored and not considered by the detaining authority before issuing the detention order. It is clear to our mind that in the case on hand, at the time when the detaining authority passed the detention order this vital fact, namely, the acquittals of the detenu in case Nos. mentioned at serial Nos.2 and 3 have not been brought to his notice and on the other hand they were withheld and the detaining authority was given to understand that the trial of those cases were pending. The explanation given by the learned counsel for the respondents, as we have already pointed out, cannot be accepted for a moment. The result is that the non-placing of the material fact – namely the acquittal of detenu in he above-said two cases resulting in non-application of minds of the detaining authority to the said fact has vitiated the requisite

subjective satisfaction, rendering the impugned detention order invalid.“

6.On the other hand Mr.L.R.Pujari, learned APP has relied upon the grounds of detention. The authority has not filed affidavit in reply.

7.It may be noted that petitioner has also made representation to the Police Commissioner on 27/12/2005 in which it was categorically stated that in one incident, he has acquitted.

8.In view of the aforesaid facts and circumstances of the case in which the detenu has already been acquitted and subjective satisfaction arrived at by the authority is vitiated. The matter is completely covered by the judgment in the case of Dharmadas (supra), the petition is required to be allowed and order of detention is required to be quashed and set aside.

9.In view of the same, detention order dated 15/10/2005 passed by the Police Commissioner, Ahmedabad is quashed and set aside. Ramesh Babaji Solanki is ordered to be set at liberty if not required in any other case. The petition is allowed. Direct service is permitted with

no order as to cost. Rule made absolute.

(K.M.MEHTA, J.)

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